

ORIGINAL
OPEN MEETING ITEM



COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



Executive Director

22

ARIZONA CORPORATION COMMISSION

DATE: March 20, 2006
DOCKET NO: T-03943A-05-0724
TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Teena Wolfe. The recommendation has been filed in the form of an Order on:

TIME WARNER TELECOM OF ARIZONA, LLC
(ASSET ENCUMBRANCE)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

MARCH 29, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

APRIL 4 AND 5, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

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MAR 20 2006

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BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 TIME WARNER TELECOM OF ARIZONA LLC
10 FOR APPROVAL OF CERTAIN FINANCIAL
11 TRANSACTIONS.

DOCKET NO. T-03943A-05-0724

DECISION NO. _____

12 **ORDER**

13 Open Meeting
14 April 4 and 5, 2006
15 Phoenix, Arizona

16 **BY THE COMMISSION:**

17 On October 18, 2005, Time Warner Telecom of Arizona, LLC ("TWTA" or "Applicant")
18 filed an application with the Arizona Corporation Commission ("Commission") requesting approval
19 of the guarantee of certain obligations undertaken by its affiliated entity, Time Warner Holdings, Inc.
20 ("TWT Holdings").

21 On February 8, 2006, the Commission's Utilities Division Staff ("Staff") filed a Staff Report
22 recommending approval of the application.

23 * * * * *

24 Having considered the entire record herein and being fully advised in the premises, the
25 Commission finds, concludes, and orders that:

26 **FINDINGS OF FACT**

27 1. TWTA is a limited liability company organized and existing under the laws of the
28 state of Delaware and is a subsidiary of TWT Holdings, also a Delaware corporation. TWT Holdings
is a direct, wholly-owned subsidiary of Time Warner Telecom, Inc. ("Time Warner").

2. In Decision No. 63262 (December 14, 2000), the Commission granted the Joint
Application of TWTA and GST-AZ Net (AZ), Inc. for the transfer of assets and Certificate of
Convenience and Necessity ("CC&N") from GST-AZ to TWTA. TWTA received the CC&N with

1 authority to provide competitive local exchange and interexchange telecommunications services in
2 Arizona.

3 3. TWTA operates in Arizona with 38 employees serving approximately 350 commercial
4 and governmental accounts.

5 4. On October 18, 2005, TWTA filed the above-captioned application with the
6 Commission requesting expedited approval of the guarantee of certain obligations undertaken by its
7 affiliated entity TWT Holdings. TWTA filed a supplement to its application on October 28, 2005.

8 5. On February 8, 2006, Staff filed a Staff Report recommending approval of the
9 application, and on February 10, 2006, Staff filed an amended application in which it continued to
10 recommend approval but recommended the additional condition that TWTA be required to notice its
11 customers of the financing application either through a direct mailing or publication of notice in a
12 newspaper of general circulation for its Arizona customers, and file verification of the notice with the
13 Commission's Docket Control.

14 6. On March 15, 2006, TWTA filed verification that it caused notice of its application to
15 be published in *The Daily Territorial* and *The Record Reporter*, newspapers of general circulation for
16 TWTA's Arizona customers, on March 10, 2006.

17 7. In Decision No. 67108 (July 9, 2004), the Commission authorized TWTA to encumber
18 assets and guarantee obligations of TWT Holdings in connection with a financing undertaken by
19 TWT Holdings. The transactions undertaken under that authority included the issuance by TWT
20 Holdings of \$200 million of fixed-rate Senior Notes due in 2014 ("2014 Notes"); \$240 million of
21 Second Priority Senior Secured Floating Rate notes due in 2011 ("2011 Notes"); and a \$150 million
22 senior secured revolving credit facility. As a condition of that approval, the Commission required
23 TWTA to obtain a performance bond in the amount of \$1.7 million.¹ TWTA states in its current
24 application that TWT Holdings has not drawn on the credit facility.

25 8. In Decision No. 67815 (May 5, 2005), the Commission authorized TWTA to

26 ¹ TWTA filed proof of the performance bond on September 7, 2004. On December 14, 2004, TWTA filed an application
27 for a reduction of performance bond (Docket No. T-03943A-04-0909) and that application is pending before the
28 Commission. Decision No. 67815 (May 5, 2005), subsequently found that the existence of the performance bond helped
to mitigate the concern that TWTA's ultimate parent, Time Warner, was highly leveraged, and ordered that the
performance bond not be reduced or eliminated unless otherwise ordered by the Commission.

1 guarantee the debt of TWT Holdings in an amount up to and including \$400 million of 9.25 percent
2 Senior Notes. TWTA states in its current application that the actual issuance of the Senior Notes
3 totaled \$200 million, and proceeds from that issuance were used to redeem notes due in 2008.

4 9. The encumbrances authorized by Decision Nos. 67108 and 67815 total \$990 million.

5 10. Authorization of the request in this application would increase the maximum potential
6 guarantee by \$160 million.

7 11. The transaction that is the subject of this application will be guaranteed by TWTA and
8 will be secured by a pledge of TWTA's stock, interests, and assets. The loan involves an aggregate
9 total guarantee amount not to exceed \$310 million, with the flexibility of a maximum \$200 million
10 term loan and a corresponding change to the existing \$150 million revolving credit facility. The
11 revolving credit facility guarantee will range between \$110 million and a maximum of \$200 million.
12 If the guarantee on the revolving credit facility is increased from \$110 million, the guarantee on the
13 term loan will be reduced by the same amount, so that the total amount guaranteed will not exceed
14 \$310 million. The guarantee and pledge of assets will arise from the same 2004 Security Agreement
15 that was approved in Decision No. 67108. The term of the loan is five years, with the provision that
16 the term will be extended for two years if the 2011 Notes and the 2014 Notes are refinanced prior to
17 the termination of the expiration of this five-year term. The transactions were expected to close in
18 November 2005, with the proceeds used to redeem notes due in 2008. However, the guarantee by
19 TWTA and encumbrance of the Arizona assets as security for the new term loan and the possible
20 increase in the revolving credit facility will not become effective until Commission approval.

21 12. TWTA states in its application that it seeks approval of the guarantee pursuant to
22 A.A.C. R14-2-804 and A.R.S. § 40-285, and that it will not impair the financial status of TWTA,
23 otherwise prevent TWTA from attracting capital at fair and reasonable terms, or impair the ability of
24 TWTA to provide safe, reasonable, and adequate service.

25 13. TWTA also states that approval of the application is in the public interest because it
26 will enable TWT Holdings to obtain additional financing and working capital, and the extension of
27 the maturities and reduction in interest expense will result in better financial conditions for TWT
28 Holdings and TWTA. In its application, TWTA also states that the requested authority will

1 strengthen TWTA's ability to compete in the local exchange market in Arizona by providing access
2 to greater financial resources. TWTA states that these resources and the flexibility provided by the
3 financing will allow TWTA to respond to competitive pressures and to continue to provide
4 consumers with full facilities-based competitive choice.

5 14. The Staff Report states that the purpose of the TWT Holdings financing is to redeem
6 \$200 million of TWT Holdings' 9.25 percent existing Senior Notes due in 2008. According to Staff,
7 the projected change in the interest rate as filed amounts to an interest savings of \$5 million per each
8 year the Senior Notes are outstanding. Staff did not perform a financial analysis of the state
9 operating subsidiary, because no change is expected in TWTA's operating results due to the
10 transactions. Staff determined, however, that Time Warner's debt service coverage ratio ("DSC")
11 will improve from 1.72 to 1.80. Time Warner's capital structure will not change as a result of the re-
12 issuance, and it will remain a highly leveraged entity with 77.2 percent debt. Staff states that concern
13 over Time Warner's leverage is mitigated by the availability of alternative providers for service for
14 TWTA's customers.

15 15. Staff concluded that the guarantee is within the corporate powers of TWTA,
16 compatible with the public interest, and will not impair its ability to perform service.

17 16. Staff recommended that the application be approved under A.A.C. R14-2-804(B) and
18 that TWTA be authorized to guarantee the debt of TWT Holdings of \$200 million on the terms and
19 conditions set forth in the application. Staff further recommended approval of TWTA's request for
20 authorization to increase its guarantee on its parent's revolving credit facility to an amount not to
21 exceed \$200 million for a combined amount not to exceed \$310 million. Staff recommended that
22 TWTA be authorized to grant liens in favor of the lender as required to secure the borrowings
23 authorized, and that TWTA be authorized to engage in any transaction and to execute any documents
24 necessary to effectuate the authorizations granted.

25 17. Staff further recommended approval subject to the condition that TWTA notice its
26 customers of the financing application either through a direct mailing or publish a notice in
27 newspaper(s) of general circulation for TWTA's customer base and file verification of the notice with
28 Docket Control. As set forth in Findings of Fact No. 6 above, TWTA has fulfilled this recommended

1 condition.

2 18. The proposed guarantee will enable TWT Holdings to obtain additional financing and
3 working capital, and the extension of the maturities and reduction in interest expense will help
4 TWTA to continue to offer competitive services in Arizona. Although TWTA's ultimate parent,
5 Time Warner, is highly leveraged, that concern is mitigated by the availability of alternative
6 providers to TWTA's Arizona customers, and by maintenance of a performance bond as set forth in
7 Decision No. 67108. The performance bond shall not be reduced or eliminated unless otherwise
8 ordered by the Commission.

9 19. Staff's recommendations set forth in Findings of Fact No. 16 are reasonable and
10 should be adopted.

11 CONCLUSIONS OF LAW

12 1. TWTA is a public service corporation within the meaning of Article XV of the
13 Arizona Constitution, A.R.S. §§ 40-285, 40-301, 40-302, and A.A.C. R14-2-804.

14 2. The Commission has jurisdiction over TWTA and the subject matter of the
15 application.

16 3. Authorization of TWTA's guarantee in support of TWT Holdings' note redemption is
17 compatible with the public interest.

18 4. The guarantee authority approved herein will not impair the financial status of the
19 public utility, otherwise prevent it from attracting capital at fair and reasonable terms, or impair the
20 ability of the public utility to provide safe, reasonable and adequate service.

21 5. The guarantee authority approved herein is for lawful purposes within TWTA's
22 corporate powers, is compatible with the public interest, with sound financial practices, and with the
23 proper performance by TWTA of service as a public service corporation will not impair TWTA's
24 ability to perform that service.

25 6. Staff's recommendations in Findings of Fact No. 16 are reasonable and should be
26 adopted.

27 ...

28 ...

ORDER

IT IS THEREFORE ORDERED that pursuant to A.R.S. §§ 40-285, 40-301, and AAC R14-2-804, Time Warner Telecom of Arizona, LLC's application for approval to guarantee the debt of Time Warner Telecom Holdings, Inc. as set forth in the October 18, 2005 application as supplemented by the October 28, 2005 filing, and conditioned upon maintenance of the performance bond as required by the Commission, is hereby granted.

IT IS FURTHER ORDERED that Time Warner Telecom of Arizona, LLC is hereby authorized to grant liens and engage in any transactions and/or execute any documents necessary to effectuate the authorization as granted herein.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2006.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

TW:mlj

1 SERVICE LIST FOR:

TIME WARNER TELECOM OF ARIZONA, LLC

2 DOCKET NO.:

T-03943A-05-0724

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